

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 92-80754-1

RONALD LEE HICKS,

Defendant.

**ORDER DIRECTING APPOINTED COUNSEL TO FILE A SUPPLEMENTAL BRIEF
AND THE GOVERNMENT TO FILE A RESPONSE TO THE SUPPLEMENTAL BRIEF**

Pending before the court is Defendant Ronald Lee Hicks's motion to reduce his sentence based upon the 2011 amendments to the provisions of the United States Sentencing Guidelines governing cocaine-base offenses. The court appointed the Federal Defenders Office to "determine [Defendant's] eligibility, confer with the Probation Department and the U.S. Attorney's Office, and gather the pertinent information to assist the court in expeditiously resolving" Defendant's motion.

(12/06/2011 Order, Dkt. # 563.) On December 19, 2011, appointed counsel filed a "Notice Regarding Ineligibility for Resentencing . . ." indicating that because Defendant was "sentenced for engaging in a Continuing Criminal Enterprise pursuant to 21 U.S.C. § 848," he is not eligible for resentencing under the 2011 United States Sentencing Guidelines amendments. (Notice of Ineligibility 3-4, Dkt. # 565.) Appointed counsel, however, filed a second notice just nine days later withdrawing her original statement of ineligibility and indicating that she needed additional time review the trial transcripts of Defendant's plea hearing and sentencing. (Notice of Withdrawal, Dkt. # 566.) A third and final notice was filed by appointed counsel on January 20, 2012, simply stating that

“Counsel does not believe that supplementation of the motion is necessary” and failing to address whether, in fact, Defendant is ineligible for resentencing. (Notice and Request for Ruling, Dkt. # 568.) Merely stating that supplementation of the motion is unnecessary, however, does not adequately discharge the duty the court imposed on appointed counsel in its December 6, 2011, especially in light of appointed counsel’s original statement that Defendant is not eligible for resentencing. The court therefore directs appointed counsel to file a supplemental brief addressing in reasonable detail (1) whether an individual sentenced for engaging in a continuing criminal enterprise is eligible for resentencing under the 2011United States Sentencing Guidelines amendments; (2) whether this particular Defendant was so sentenced; and (3) if he was whether and how he can colorably claim that he is eligible for resentencing.

Accordingly,

IT IS ORDERED that Defendant’s appointed counsel is DIRECTED to file a supplemental brief as specified above on or before **March 14, 2012**.

IT IS FURTHER ORDERED that the Government is DIRECTED to file a response to appointed counsel’s supplemental brief on or before **April 4, 2012**.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: February 28, 2012

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, February 28, 2012, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522